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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No. _____

GEORGE GLASCOE

v.

SHOPPERS FOOD WAREHOUSE
CORPORATION

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT

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July 6, 1998

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Questions Presented

Whether it is a deprivation of an individual's constitutional right and benefit to a trial by Jury for a trial judge to grant judgment notwithstanding the verdict to a corporation when substantial factual questions existed as to whether a corporation's use of rubber mats that moved, and slipped when walked upon and did not have beveled edges, and were prone to bunching up in doorway of supermarket that caused an elderly individual to fall and seriously and permenantly injure himself?

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No. _____

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v.

SHOPPERS FOOD WAREHOUSE
CORPORATION

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

Petitioner, George Glascoe, respectfully prays that a writ of certiorari issue to review the judgment and decision of the Court of Appeals of Maryland entered on April 7, 1998.

DECISIONS BELOW

The decision of the Court of Appeals for Maryland is not reported. The

decision along with the order denying Petitioner's Petition, the decision of the Court of Special Appeals of Maryland, and the oral ruling of the trial judge from the bench are attached as Appendices hereto.

JURISDICTION

The decision of the Court of Appeals of Maryland was entered on April 7, 1998. This Court's jurisdiction is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Seventh Amendment and the 14th Amendment of the United States Constitution.

I. STATEMENT OF THE CASE

A. Nature of the Case

This ia a dispute involving an elderly individual, Petitioner George

Glascoe (Glascoe), against a corporation, Respondent Shoppers Food Warehouse Maryland Corp., (Shoppers) charging that Shoppers breached the applicable standard of ordinary care by failing to maintain its premises in a safe condition. Mr. Glascoe demonstrated that Shoppers was negligent in its use of unsafe rubber mats in the entrance of its Takoma Park Store and in failing to properly inspect and maintain these mats. As a result of Shoppers' negligence, Mr. Glascoe tripped and fell because of the unsafe mats and suffered severe, permanent injuries.

B. Trial Proceedings

This case was tried before a jury in the Circuit Court for Prince George's County, Judge Thomas P. Smith, presiding. On March 21, 1997, the jury found that Shoppers was in fact negligent, that

Shoppers' negligence was the proximate cause of Glascoe's injuries and awarded damages in the amount of $120,320.00. Shoppers moved for judgment notwithstanding the verdict in Petitioner's favor.

A hearing was held on April 25, 1997 to decide Shoppers' motion. The court ruled from the bench, contrary to the jury, in favor of Shoppers on its motion for judgment, finding that there was no evidence "that the breaches of duty identified, proximately or were a approximate cause of Mr. Glascoe's injury" and that "We don't know what the defect was". Glascoe filed a timely Notice of Appeal. The Court of Special Appeals of Maryland affirmed the trial court. Glascoe appealed to the Court of Appeal of Maryland. The Court of Appeals affirmed

by denying Glascoe's petition for review based on a lack of public interest. Petitioner has been deprived of his constitutional right to a jury trial in his case.

George Glascoe, age 85, tripped and fell as he entered the Shoppers Food Warehouse store in Takoma Park, Maryland on Saturday, March 25,1995 at about 12:25 p.m. As a result of his fall, Mr. Glascoe suffered a fracture to the neck of his right femur near the hip socket and several broken ribs. Mr. Glascoe was hospitalized for several weeks, much of the time in traction, underwent hip replacement surgery and was required to participate in rehabilitative therapy to regain his ability to walk. Mr. Glascoe's injury is permanent. His medical bills totaled $20,130.00. There was no evidence

to contradict Mr. Glascoe's injuries or the fact that he fell inside the Shoppers Food Warehouse Store. The injuries he suffered formed the basis of his action against Shoppers.

Evidence presented

Mr. Glascoe testified that he was tripped when his left foot "got hooked on this rug", referring to a small gray mat that Shoppers' Food Warehouse placed in the doorway of the Supermarket. Mr. Glascoe, at one point in the proceedings, left the witness stand to physically demonstrate how his foot got caught in the floormat as he described the event to the jury. At trial, Mr. Glascoe identified photographs of the entrance to the store and the type of mats that were on the floor at the time of his fall. The

photographs were dated March 30, 1995. These photographs were admitted into evidence and published to the jury.

Mr. Glascoe testified that his fall was caused by the mats. He stated unequivocally that "I got messed up in that rug" when asked directly what caused him to fall. Mr. Glascoe's expert witness established at trial the hazardous conditions created by these mats and the availability of superior products that would have been safer and created less of a trip and fall hazard. This expert, Dr. Stephen I. Rosen, was qualified to testify by the trial court on the issues of the availability of non-slip under surfaces that would prevent a mat from slipping, that non-slip mats could prevent a mat from bunching and that mats wear out and

that when they wear out that mats can bunch and slip.

Shoppers presented evidence that created questions of fact as to what caused Glascoe to fall. Ms. Angela Spivey, a check out cashier, testified that she observed that Mr. Glascoe "had a dizzy spell and fell" and did not appear to trip. Records and testimony produced at trial by Shoppers were consistent with Mr. Glascoe's testimony that he was tripped by the rugs in that one document described the incident as "Mr. Glascoe's cane got caught in the rug. He tripped and dislocated his hip." Shoppers also created issues of fact regarding their level of care with regard to the mats in question. The store manager, Jim Zello, testified that the mats were replaced once a week, and that they were usually

replaced on a Friday. The mats depicted in the pictures presented at trial were the same as the mats that tripped the Plaintiff. Mr. Zello testified that he had not become aware of any problem with the mats between the time the store opened at 8:00 a.m. and the time of Mr. Glascoe's fall at 12:25 p.m. Mr. Zello testified that the rugs in the entrance way could be moved. Mr. Zello testified that he observed a ripple in one of the rugs depicted in the photographs presented as evidence at trial, indicating that the rug was not laying flat. Mr. Zello further testified that over 1,000 people entered the store that \morning, crossing those rugs and that it was possible that the rugs could be moved by persons walking over them and shopping carts being pushed across them. Mr. Zello could not state

that he or anyone else actually inspected the rugs in question between the time the store opened at 8:00 a.m. and the time of Mr. Glascoe's accident at 12:25 p.m.., only that it was the "policy" to inspect the floor every hour. Further, the Safety Coordinator for Shoppers Food Warehouse, Larry Armbruster, was unable to produce any inspection logs that would indicate that the entrance way was inspected at all that day.

After deliberating over this evidence, the jury rendered a verdict for the Mr. Glascoe in the amount of $120,320.00. Mr. Glascoe also petitioned the Court for costs in the amount of $575.70. This petition was never ruled upon in light of the Court's granting of Shoppers' motion for j.n.o.v.

REASONS FOR GRANTING THE WRIT

Petitioner was deprived of his right to a trial by jury when the Court made erroneous findings of fact in support of its conclusion that there was no evidence of negligence on Shoppers' part. The Court below erred in granting Appellee's motion for judgment non obstante verdictum by invading the province of the jury and second-guessing the jury's factual determinations and credibility determinations relevant to the question of primary negligence and proximate cause when there existed substantial issues of fact and these issues of fact were resolved by the jury on a special verdict sheet. In light of the evidence presented at trial, it was improper for the trial court to determine that "there is simply no evidence that the breaches of duty

identified proximately or were an approximate cause of Mr. Glascoe's injury" and that the Defendant's failure to inspect the mats on a frequent basis was not dispositive of the question of negligence and that "We don't know what the defect was". This was a factual question for the jury, not the judge.

1. The trial judge invaded the province of the jury and made inaccurate factual determinations relevant to the question of primary negligence by Appellee in his decision to grant judgment notwithstanding the verdict

The trial judge improperly invaded the province of the Jury by making inappropriate factual determinations and resolving credibility issues contrary to the Jury's verdict. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255(1986)("Credibility determinations, the weighing of the evidence, and the drawing

of legitimate inferences from the facts are jury functions, not those of a judge...." Here, the jury found, based on the evidence presented at trial, that Shoppers Food Warehouse was negligent. The Court was constitutionally bound by the jury's findings unless the evidence was insufficient to support them. Houston v. Safeway Stores, 346 Md. 503 (1997), Dennard v. Green, 335 Md. 305, 322-23, 643 A.2d 422, 431 (1994). In this case, the evidence was more than sufficient to support the jury's findings. As the nonmovant, Glascoe's evidence was to be believed as so found by the jury and not second-guessed by the trial judge. Cf. See Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. ("The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in

his favor."). See also, Baltimore Transit Co. v. Worth, 188 Md. 119, 52 A.2d 249 (1947); Mondawmin Corporation v. Kress, 266 A.2d 8, 12 (1970); Banks v. Iron Hustler Corp., 475 A.2d 1243, 1250 (Md.App. 1984). Any review of the evidence stated above in the light most favorable to Mr. Glascoe supports the conclusion that there was sufficient evidence to sustain the jury's finding that Shoppers' Food Warehouse was negligent and that the trial judge erred constitutionally in granting judgment n.o.v.

a. Absence of Inspection Logs

As an invitee, Mr. Glascoe owed Mr. Glascoe a duty of "reasonable and ordinary care to keep his premises safe for the invitee and to protect him from injury caused by an unreasonable risk which the

invitee, by exercising ordinary care for his own safety, will not discover." Sherman v. Suburban Trust Co., 282 Md. 238, 242, 384 A.2d 76 (1978). Shoppers failed to put on any evidence that they exercised ordinary due care to make the environment safe for persons such as Mr. Glascoe. Store Manager Jim Zello testified that he checked the rugs on the day of the incident at 8:00 a.m. when the store opened, but did not testify that the rugs were checked hourly during the day according to Shoppers Food Warehouse policy. He merely stated that it was the "policy" of Shoppers Food Warehouse to check the floors on an hourly basis--not that he or any other employee actually made such a check of the floor. Id. Mr. Zello testified that between the time the store opened and the time Mr. Glascoe

fell, over 1,000 people had entered the store and that these persons could have moved the mats with their feet and their shopping carts.

Though requested in discovery, Shoppers produced no sweep logs or other written documentation at trial that the floor area where Mr. Glascoe tripped and fell was ever inspected on that day. Given this lack of evidence of ordinary care by Shoppers in insuring that their economy floor mats were flat and free of tripping hazards between the hours of 8:00 a.m. and 12:25 p.m., the jury's finding of negligence was not only reasonable, but expected. Primary negligence is properly a jury question where the trip and fall accident was either the result of a defective design or a failure to inspect. Dickey v. Hochschild, Kohn & Co.

157 Md. 448, 146 A. 282 (1929). The high volume of patrons crossing the mats in question on the morning of the incident is a significant factor that was properly considered by the jury in light of the Appellee's duty to inspect the mats on a frequent basis as part of its fulfillment of its obligation to exercise ordinary care. Molaison v. West Bros. of Thibodaux, Inc., 338 So. 2d 726 (La. App. 1976). Shoppers did not inspect the floor in accordance with its own policy and this failure to inspect, the jury found, was the proximate cause of Mr. Glascoe's injuries.

Shoppers' failure to inspect the floor at any time between 8:00 a.m. and 12:25 p.m. was negligent as the jury found.

The reason for Shoppers' policy of inspecting the mats on an hourly basis was that Shoppers knew that the economy mats could be moved, bunch up and create a tripping hazard. In failing to make these inspections, Shoppers abdicated its responsibility to make the floor safe or to warn Mr. Glascoe of any unsafe condition. This evidence of constructive knowledge distinguishes this case from Moulden v. Greenbelt Consumer Services, Inc., 210 A.2d 724 (1965), upon which Shoppers relied heavily at trial (J.N.O.V. granted because plaintiff failed to present evidence that storekeeper had constructive knowledge of bean on the floor). Constructive knowledge of this type of dangerous condition is imputed to the proprietor if he has had a reasonable opportunity to learn of the dangerous

condition, but failed to do so. Giant Food v. Mitchell, 640 A.2d 1134, 334 Md. 633 (1994); See also, Molaison v. West Bros. of Thibodaux, 338 So.2d 726 (La. App. 1976). In failing to make the hourly inspections, it was reasonably foreseeable that a Plaintiff, such as Mr. Glascoe, would have been injured by the bunching of the mats that Shoppers admits were movable by the 1,000 customers and carts walking across them the morning of the incident.

There is now a conflict between the law of the various states as to the safety standards that persons shopping in stores can expect as a result of this decision. For example, in Louisiana, the courts have found that lack of inspection logs can be properly considered by a jury in light of the storekeeper's duty to inspect the mats on a frequent basis as part of its

fulfillment of its obligation to exercise ordinary care. See, Molaison v. West Bros. of Thibodaux, Inc., 338 So. 2d 726 (La. App. 1976).

The trial court specifically found that "there is simply no evidence that the breaches of duty identified proximately or were a approximate cause of Mr. Glascoe's injury" in making its erroneous ruling directing a verdict for the Shoppers. This finding was highly improper in light of the fact that, in Maryland, questions of proximate causation are jury questions. See, Suburban Trust Co. v. Waller, 44 Md. App. 335 (1979) ("Ordinarily, a question of proximate or "responsible" as opposed to superseding causation is a matter to be resolved by the jury"); Short v. Wells, 249 Md. 491 (1967) (where there is direct as well as circumstantial evidence of

negligence, issue should have been submitted to the jury); Sun Cab Co. v. Reustle, 192 A. 292, 296 (Md. 1937) ("The true rule is that what is proximate cause of an injury is ordinarily a question for the jury. It is only when the facts are *undisputed, and are susceptible of but one inference*, that the question is one of law for the court, and whether it will or will not be a question for the jury will depend upon the facts of each case.") (emphasis added). Further, the Court submitted a special verdict form to the jury to specifically address the question of proximate cause. The judge was bound by the jury's findings of fact as to this question. Edwards v. Gramling Engineering Corp., 322 Md. 535, 588 A.2d 793, 797, cert. denied, 502 U.S. 915 (1991).

There were clearly disputed factual questions relevant to the question of proximate cause of Mr. Glascoe's injuries that were solely within the jury's province to resolve. These factual disputes were not susceptible of but one inference, but were susceptible of multiple inferences. Mr. Glascoe's testimony concerning the rug causing him to fall clearly created a factual dispute with Shoppers' witnesses. Mr. Glascoe's live demonstration and testimony, as far as the jury was concerned, clearly indicated that the rug caused his fall. The jury could have determined, otherwise had there been credible evidence to the contrary. The jury, however, correctly concluded that Shoppers' negligent use of non-beveled edged mats that bunched up when walked upon was the proximate cause

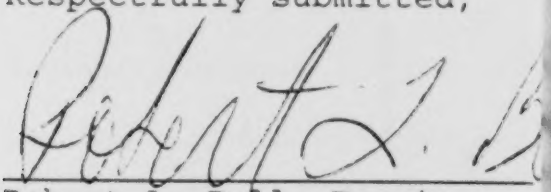
of Mr. Glascoe's injuries. This was a jury question and a constitutional violation for the trial court to disregard it.

By submitting the question of proximate cause to the jury on a special verdict form as a special interrogatory, the judge was bound by the jury's findings of fact. Edwards v. Gramling Engineering Corp., 322 Md. 535, 588 A.2d 793, 797, cert. denied, 502 U.S. 915 (1991). The court's reversal of the jury's finding of proximate cause deprived Mr. Glascoe of this constitutional right and should be reversed.

V. CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals of Maryland.

Respectfully submitted,



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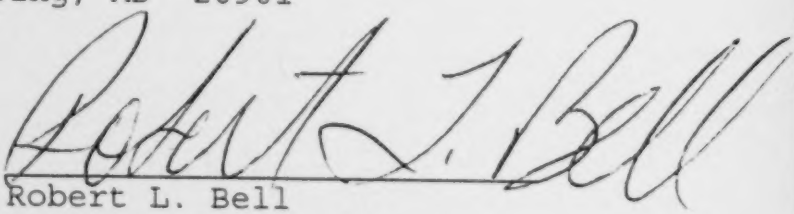
Counsel for Petitioner

July 6, 1998

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Petition for Writ of Certiorari were mailed by first class mail, postage prepaid, this **6th** day of July, 1998 to:

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Robert L. Bell
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APPENDIX A

GEORGE GLASCOE	*	IN THE
	*	COURT OF APPEALS
	*	OF MARYLAND
	*	Petition Docket No. 653
SHOPPERS FOOD WAREHOUSE MD. GROUP	*	September Term 1997
	*	(No. 905, Sept. Term 1997, Court of
	*	Special Appeals)

ORDER

Upon consideration of the petition for writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: APR 7 1998

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 905

September Term, 1997

GEORGE GLASCOE

SHOPPERS FOOD WAREHOUSE MD CORP.

Davis,
Salmon,
Eyler,

JJ.

Opinion by Eyler, Jr.

Filed: January 27, 1998

#CAL9523166

On March 25, 1995, appellant, George Glascoe, slipped and fell in a grocery store owned by appellee, Shoppers Food Warehouse Md Corp., located in Takoma Park, Maryland. On the day of the accident, appellant, a regular customer of the store, was shopping alone and walking with a cane. He fell on a floor mat located in the entrance foyer of the store. The mats were three feet by nine feet in size and had a rubber backing with a carpet material on top. Appellant testified that he fell on the mat located closest to the entrance.

Appellant filed suit against appellee in the Circuit Court for Prince George's County seeking compensation for personal injuries sustained as a result of the fall. Appellant alleged that appellee was negligent in the use of unsafe mats and in failing to inspect and maintain the mats.

The case was tried before a jury. At the close of appellant's case, appellee moved for judgment on the ground that the evidence was legally insufficient to sustain a finding of liability. The trial court reserved on the motion. Appellee renewed its motion at the close of all of the evidence, and the trial court again reserved. The jury found appellee guilty of negligence, found that the negligence was a proximate cause of appellant's injuries, and awarded damages. Appellee moved for judgment notwithstanding the verdict, or in the alternative, a new trial. The trial court granted the motion for judgment notwithstanding the verdict on the ground that the evidence was legally insufficient to sustain the jury's findings.

Questions Presented

Appellant poses three questions, which are variations of but one question: Did the trial court err in granting appellee's motion for judgment notwithstanding the verdict?

Standard of Review

The Court of Appeals, in Houston v. Safeway, 346 Md. 503 (1997), recently reiterated the standard applicable to the issue before us:

> If a court reserves its ruling on a motion for judgment that is made at the close of evidence, the motion "becomes a motion for judgment notwithstanding the verdict if the verdict is against the moving party. . . ." Maryland Rule 2-532(b). When reviewing a judgment n.o.v., "this Court must resolve all conflicts in the evidence in favor of the plaintiff and must assume the truth of all evidence and inferences as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover - that is, the evidence must be

viewed in the light most favorable to the plaintiff." **Smith v. Bernfield**, 226 Md. 400, 405, 174 A.,2d 53, 55 (1961) (citations omitted). We have explained that: "As with respect to a judgment n.o.v., * * * [i]f there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact in issue, then a trial court would be invading the province of the jury by declaring a directed verdict." **Impala Platinum v. Impala Sales**, 283 Md. 296, 328, 289 A.2d 887, 905-06 (1978). Stated another way: "Only where reasonable minds cannot differ in the conclusions to be drawn from the evidence, after it has been viewed in the light most favorable to the plaintiff, does the issue in question become one of law for the court and not of fact for the jury." **Pickett v. Haislip**, 73 Md. App. 89, 98, 533 A.2d 287, 291 (1987), cert. denied, 311 Md. 719, 537 A.2d 273 (1988). If judgment n.o.v. has been granted in error, the reviewing court may vacate the erroneous judgment of the trial court and reinstate the verdict of the jury. Md. Rule 2-532(f)(1); see **McSlarrow v. Walker**, 56 Md. App. 151, 161, 467 A.2d 196, 20 (1983), cert. denied, 299 Md. 137, 472 A.2d 1000 (1984).

Id. at 521-22.

Discussion

Appellant's theory at trial was the appellee was negligent in the use of low-grade rubber mats which were not "non-slip." At trial, appellant argued that (1) the mats did not cover a sufficient area, (2) did not have beveled edges, and (3) were prone to "bunching." These conditions, according to appellant, created a tripping hazard. Relying on Moore v. American Stores Company, 169 Md. 541 (1935), appellant asserts that when a dangerous condition of a floor exists, the question of negligence of the owner of the premises is a fact question. In Moore, the dangerous condition of the floor was that it was greasy. In this case, the dangerous condition of the floor in question, according to appellant, is that it was covered with "cheap, slippery

floor mats." As additional evidence of negligence, appellant relies on the evidence of appellee's failure to inspect the floor and mats on a frequent basis.

The pertinent evidence consists of the testimony of appellant and an expert witness, Dr. Stephen I. Rosen, which we review in the light most favorable to appellant. The pertinent portion of appellant's testimony, on direct examination, is as follows:

> [MR. GLASCOE]: I got to the store and got out of the car to enter the store, to go get my groceries, and just as I come across, there was a man ahead of me. He started to hesitate going in the store, and I went in there afterward. When I went in there, somehow or other - I can't explain it - my left foot got hooked on this rug, and it went like that, and then I went out. I don't know, I was knocked out. And when I went to get up, I couldn't get up. I just fell right on over, and I had pain and everything else.

[APPELLANT'S ATTORNEY]: Did you have a cane with you on that date?

A. I had it. I always carried it.

Q. Did you use your cane as you walked into the store?

A. No. I carried that cane just in case it was necessary, if I got tired. I used to go on walks, and whenever I got tired or exhausted, I used the cane. So, I had it with me.

Q. How far were you into the store before you fell?

A. Just after you get over the threshold.

Q. So, you were inside the store?

A. Yeah, I was inside the store.

Q. And what type of floor was on the - do you know what type of floor was in the store at the time?

A. It looked to me like it was tile or cement.

Q. Was there something on top of that floor?

A. The rug.

Q. Does this rug have anything to do with your falling?

A. I got tangled up in it.

Q. Can you explain again for the jury how the rug caused you to fall?

A. Mr. Adams, as I got on the rug and put the cane down to take my next step, my left foot came, and the rug was hooked in there somehow or another, and as turned, I tried to get it loose. At that time I slipped and I fell, and back I went. I tried to get up and everything. I was in pain and everything else. I couldn't get up.

* * * *

Q. What caused you to fall in the supermarket?

A. I got messed up in that rug.

On cross-examination, appellant testified as follows:

[APPELLEE'S ATTORNEY]: You never saw, prior to your accident, that floor mat laying other than perfectly flat on that floor, did you?

A. I've seen them up there, when it's rumpled up and everything else. That day it was laying flat on the floor.

* * * *

Q. If I understand what you have told us earlier, as you walked in the doorway, you stepped onto the mat with one foot, and somehow your other foot got tangled up in the mat, and you fell down?

A. That's what I'm saying.

Q. You don't know how your other foot got tangled up in that mat?

A. I can't look behind me, sir. No, I don't know, sir.

Q. Whatever it is, for some reason your foot got tangled, and you stumbled and fell?

A. That's what I'm telling you, sir.

Q. How that happened, who knows?

A. I don't know.

On re-direct, appellant reenacted his fall and testified as follows:

[APPELLANT'S COUNSEL]: Mr. Glascoe, you were just shown a document, Defendant's Exhibit Number 6. What did you mean by the word "trip"?

A. Well, that's the word that I used. What happened, because - could I sort of demonstrate it to you, Mr. Adams?

Q. Sure, if you don't hurt yourself.

THE COURT: Help him down, please.

Q. Watch the chair.

A. No, that's okay. I'll show you what I'm trying to say.

Q. Okay.

A. I'll get out here where everybody can see me.

Q. Let me get you your cane.

A. Can everyone see me? I'll try and explain to you all what I'm trying to say.

Q. Explain what you mean when you say "tripped."

A. This is the door right here. About along here was a carpet right here, okay. As I entered the door, I put my foot up there. That's on the carpet.

> I'm holding the stick here. This foot, as I went to lift it, it got caught into that carpet, and by swinging like I did, I went down this away. And I don't know after that. I just saw as far as - that's what happened with the carpet. He's talking about the rug coming up or something. I don't know if my toe got into the carpet like that and I had nothing to catch on, and that's when I went down.
>
> Q. Thank you, Mr. Glascoe. If you can get back on the witness stand?

Dr. Rosen was permitted to testify as a "slip and fall/trip and fall expert witness," but on a very limited basis. The sum and substance of his testimony was that the mats in question did not cover a sufficient area of the entrance way, they were not "non-slip" which would have caused them to resist bunching, and they did not have beveled edges. According to Dr. Rosen had no personal knowledge as to what caused appellant to fall on the day in question.

Based on our review of the evidence, and viewing it in the light most favorable to appellant, we agree with the trial court. There is simply no evidence that the mat in question slipped, bunched, or that appellant fell on the edge of the mat. Consequently, there is no evidence that the propensity to bunching, the lack of beveling, or the fact that the mat was not "non-slip" caused appellant to fall. Negligence in using the mats or in failing to inspect, if any, was not a proximate cause of appellant's fall.

Appellant argues that his in-court demonstration constituted evidence of causation. The demonstration is not in the record and not reviewable by us, except to the extent that it appears in the transcript portion reproduced above. Appellant also refers to photographs of mats, which show "ridges." The

photographs in evidence, however, do not purport to show the mats as they existed in the time of the accident. In short, there is no evidence to show that any one or more of the alleged defects caused appellant's fall. Some evidence of causation is required. See Moulden v. Greenbelt Consumer Services, Inc., 239 Md. 229, 232 (1965); Moore v. American Stores Company, 169 Md. at 549.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

APPENDIX C

In The
Court of Special Appeals

September Term, 1997
No. 905

GEORGE GLASCOE

Appellant,

v.

SHOPPERS FOOD WAREHOUSE MARYLAND CORP.

Appellee.

Appeal from the Circuit Court for
Prince George's County, Maryland
(Hon. Thomas P. Smith, Associate Judge)

RECORD EXTRACT

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Attorneys for Appellant

THE COURT: Anything else.

MR. BRODERICK: No. I think that the Court has everything.

THE COURT: In reviewing this motion you do have to view the evidence in the light most favorable to the Plaintiff, as I did in this case. I can tell you, that the evidence in this case is that Mr. Glascoe, who brings true the meaning of the word gentleman, he appears to be a gentleman, carries himself as a gentleman. He looks like a gentleman, and he is.

There is absolutely no evidence from which I could conclude, that the Plaintiff's cane got caught in the rug. Mr. Glascoe didn't say that, and in fact he was asked that questions. My cane didn't get caught. It was my foot that got caught up in the rug.

What are the deficiencies that the Plaintiff needs to prove? They proved

that one of the -- two, if not both of the rugs were worn or could be considered worn. My recollection though, and it's not controlling with the decision, is at least the second rug was more worn than the first, and Mr. Glascoe by his own testimony, was just inside of the door, and, therefore, on the first rug, if those rugs were in the same position.

Second, the Plaintiff's expert, while I understand the Defendant doesn't like him to be called an expert, but, frankly, all he has shown is that he's more than 25 miles from home, and had a briefcase. The expert said, worn rugs should not be put out.

That didn't require expert testimony. He said that the rugs should not have been the loose type, and should be fitted, and flexible rugs, so that they would not

bunch up, and he faulted the defendant for that.

He said that if the rug in question is not rubber backed, has the little rubber knobs on it, so it can't slide or slip, it should be a non-slide or slip.

Finally, he said there needs to be a beveled edge on the rug, so one cannot catch ones foot on the rug. That is my recollection of the assertions of negligence.

What is the problem? The problem is we don't know why Mr. Glascoe fell, and that's why I said Mr. Glascoe is an absolute gentleman, because if would have been so easy for him to have said, I slipped because the rug was worn, and I slipped in a worn spot, and he didn't say that, because he didn't know that, or he could have said, I slipped, because the rug bunched up, and he didn't say it,

because he didn't know that to be true.

He could have said, I slipped because the rug slipped or moved under my foot, and again, he didn't say that, because he didn't know it, and he could have said, I tripped as his counsel has tried to say repeatedly on the edge of the rug, but he didn't say that.

I think that is not what he remembers, and what he remembers is, his foot, quote, got tangled or caught up in the rug, and he didn't know why he fell, and even though there is this evidence from which a fact finder could find was a breach of duty, and including the failure to inspect on a frequent enough basis, and I will get to that in a second, but, there simply is no evidence that the breaches of duty identified, proximately or were a approximate cause of Mr. Glascoe's injury.

While there is some dispute between counsel as to the testimony on inspections, I don't believe that it's dispositive even if the matter had been inspected on an hourly basis, a half hourly basis, or a minute basis.

We don't know what the defect was. So it is not knowing what the defective condition, or alleged defective or dangerous condition was. The issue how frequently the premises were inspected, and, therefore, when this condition occurred, doesn't arise in this case.

The Defendant is not an insurer of the safety of people that come on to the property. This is truly the definition of an accident, and this is something completely unintended, unforeseeable, and not preventable.

There is no point in granting a new trial, which I would be inclined to do,

because Mr. Glascoe's testimony isn't going to change, and he is the only person who knows what happened.

Miss Spivey's testimony was clearly rejected by the jury.

It is very difficult for me to do this, considering how personable Mr. Glascoe is, but the Motion for Judgment Notwithstanding the Verdict is granted, and Madam Clerk we'll enter a judgment in favor of the Defendant, against the Plaintiff for costs.

Supreme Court, U.S.
FILED
AUG 26 1998
OFFICE OF THE CLERK

(2)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No. 98-92

GEORGE GLASCOE

v.

SHOPPERS FOOD WAREHOUSE
CORPORATION

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

SUPPLEMENTAL BRIEF

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Counsel for Petitioner

August 25, 1998

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No. 98-92

GEORGE GLASCOE

v.

SHOPPERS FOOD WAREHOUSE CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

SUPPLEMENTAL BRIEF

Petitioner, George Glascoe, respectfully supplements the pending Petition for Writ of Certiorari by calling attention to a new case from the District of Columbia involving Shoppers Food Warehouse and a jury award for slip and fall similar to the facts of the instant

case. This Supplemental Brief is filed pursuant to Rule 15(8) of the Rules of this Court.

REASONS FOR GRANTING THE WRIT

On July 16, 1998, the District of Columbia Court of Appeals affirmed a decision of a trial court awarding damages to a person for injuries sustained in a slip and fall in a grocery store owned by Respondent Shoppers Food Warehouse MD Corporation. See Shoppers Food Warehouse v. Moreno, D.C. App.No.96-CV-21,July 16, 1998, as reported in The Washington Daily Law Reporter, Vol.126,No.162,p.1585 (August 21, 1998).

This case is significant because it further highlights the proper respect for the constitutional role of the jury in making factual determinations in a negligence case. In Moreno, the plaintiff

slipped and fell in a grocery store owned by Shoppers Food Warehouse MD Corporation and, as a result of Shoppers' negligence, sustained back and hand injuries. The jury awarded plaintiff $197,307 for past and future medical expenses, mental anguish, and pain and suffering. Id In upholding the jury's award, the District of Columbia Court of Appeals stated:

> "It is well settled that the determination of negligence is a factual issue. [cites omitted] "When the case turns on disputed factual issues and credibility determinations, the case is for the jury to decide." *** Moreover, '[i]n assessing the legal sufficiency of the evidence, neither the appellate court nor the trial court may act as the trier of fact, and each must 'take care to avoid weighing the evidence, passing on credibility of the witnesses, or substituting [its] judgment for that of the jury.""***

Id. at 1591.

In the instant case in the State of Maryland no such constitutional respect

was shown to the jury's role in making factual determinations and Petitioner was deprived of his constitutional right to a trial by jury. The Court below committed constitutional error by improperly re-examining the facts and granting Respondent's motion for judgment non obstante verdictum after the jury awarded Petitioner damages in the amount of $120,320.00.

Because of the lack of respect shown for jury fact-finding and awards in the State of Maryland when Shoppers Food is a Defendant, victims who are injured must seek creative legal approaches to find alternative jurisdictions for trial in order to avoid a failure of justice. The only substantive difference between the Moreno case and the instant case is the constitutional respect given to the jury's

work in fact-finding in the District of Columbia versus the lack of respect for the jury's work in fact-finding in the State of Maryland.

The Seventh Amendment to the Constitution should be applied and respected for victims of negligence equally in the State of Maryland as in the District of Columbia. Here, the Seventh Amendment afforded Petitioner a right to a jury trial in his negligence suit because such an action is analogous to "Suits at common law' "-- that is, suits brought in the English law courts." See generally, Tull v. United States, 481 U.S. 412,417 (1987).

There is now a conflict between the constitutional respect accorded a jury's factual determinations against Shoppers Food by courts in the District of Columbia

and the State of Maryland. The Seventh Amendment should not be diluted to allow the plaintiff in the Moreno case to retain her jury award of $190,307.00 for injuries she sustained in Shoppers Food in Maryland while depriving Petitioner Glascoe, in the instant case, from retaining his jury award of $120,320.00 for injuries he sustained also in Shoppers Food in the State of Maryland. This Court should act to insure respect for a jury verdict in all jurisdictions of the United States of America in order that the right to a jury trial on legal claims remains intact. See generally, Lytle v. Household Mfg., Inc., 494 U.S.545,550(1990);Dairy Queen,Inc. v. Wood, 369 U.S.500,510-11(1959); and Beacon Theatres, Inc. v Westover, 359 U.S. 500,510-11(1959).

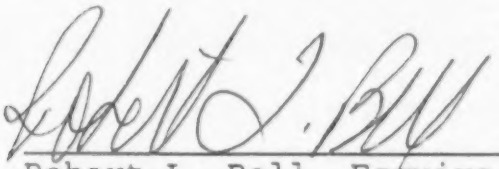
Here, it was constitutional error for the Court of Appeals of Maryland to refuse to review the deprivation of Petitioner's constitutional right and benefit of a jury trial under the Seventh Amendment to the Constitution of the United States based on the vague and overbroad statement that there was no showing that review is "desirable or in the public interest." To the contrary, in our federal form of government, correcting a violation of a constitutional right by a state official is always in the public interest. See, Adickes v. Kress & Co, 398 U.S. 144,168(1970)("This interpretation of custom recognizes that settled practices of state officials may, by imposing sanctions or **withholding benefits**, transform private predilections into compulsory rules of behavior no less than

legislative pronouncements.")(Emphasis added.)

V. CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals of Maryland.

Respectfully submitted,



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August 25, 1998

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Supplemental Brief were mailed by first class mail, postage prepaid, this 26th day of August, 1998 to:

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